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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL
FILE

In the Matter of	)	
	)	
Review of the Policy Implications	)	MM Docket No. 91-221
of the Changing Video Marketplace	)	

COMMENTS OF CBS INC.

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SUMMARY OF COMMENTS OF CBS INC.

In little more than a decade, the video marketplace has been transformed. The rise of independent stations, the emergence of a new broadcast network, the explosive growth in cable penetration, subscriptions, channel capacity, and programming services, and the arrival of videocassette recorders and other new technologies have produced an undreamed-of abundance of viewer choices and a consequent splintering of audiences and revenues.

In this new environment, decades-old regulations intended to curb station ownership and network strength are not necessary to safeguard programming diversity or to protect against undue market domination or control. Instead, these anachronistic rules place broadcasters at a profound competitive disadvantage relative to their cable and other rivals, and significantly impede investments and improvements in broadcast properties, broadcast service, and alternative programming.

In this proceeding, CBS urges the Commission to eliminate or substantially relax several of these outmoded, arbitrary, and counterproductive restraints on station ownership and network operations. Specifically, we support the following:

- <u>National Television Station Ownership Limits.</u> As the Commission has recognized in the past, national ownership limits are irrelevant to the number of video options available in a particular market and have limited relevance, at best, to questions of competitiveness and market domination. Today's profusion of video alternatives, the declining audience and advertising shares of the traditional networks, and the rise of independents, Fox, cable and other rivals have eviscerated any rationale for national limits. At the same time, group ownership offers many valuable benefits through economies of scale, efficient allocation of resources, sharing of skills and expertise. In the case of the broadcast networks, group ownership of stations provides the financial support and guaranteed audience base necessary to sustain massive investments in quality programming and news operations. The Commission should eliminate the national limits or, at least, raise them to permit ownership of up to 24 stations serving up to 35 percent of American households. (It is particularly important to raise the audience reach cap, since the networks are all already crowding the existing limit.)

- Local Ownership Rules. As the Commission has recognized in the context of radio, ownership of stations in the same area or in close proximity can lead to important economies and service improvements, particularly in enhanced programming and news and public affairs operations. The tremendous increase in the number of television stations, the proliferation of cable, and the rapid expansion of cable channel capacity have made abundant programming options available to nearly every American home and rendered unnecessary the existing strict limitation on co-ownership of stations within the same Grade B contours. Local ownership restrictions should be measured by reference to a station's Grade A, rather than Grade B, service area. The Commission should also permit co-ownership of at least two UHF stations in a market, without regard to contour overlap, and co-ownership of one VHF and one UHF station in markets which would still include at least six separately owned stations.

- Radio-Television Cross-Ownership. The Commission has already recognized the benefits of radio-television station cross-ownership in a market in adopting its current waiver policy. Given the continued increase in viewer options and levels of competition in local markets, and the Commission's positive experience with the waiver process, the Commission should further relax its radio-television cross-ownership policy to permit such combinations subject only to the applicable ownership limits for each service or, at least, to permit them in any market with at least 30 separately owned broadcast stations.

- Dual Network Rule. Given the emergence of the Fox network, the declining audience and advertising shares of the traditional networks, and, especially the proliferation and growth of dozens of cable programming networks, there is no longer any valid rationale for barring the broadcast networks from developing additional network operations. To the contrary, the continued existence of the rule unfairly handicaps the networks in their competition with multichannel cable rivals and robs broadcast stations and viewers of opportunities to receive innovative alternative programming. The dual network should be eliminated.

- Network Activities in Small Markets. The Commission should eliminate archaic provisions forbidding network station ownership in small markets and requiring the third network in a market to first offer its programming to an independent station rather than to a station primarily affiliated with another network. These rules have had virtually no application since their adoption and have been rendered entirely useless and obsolete by the vast expansion in the number of television stations and proliferation of program options.

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COMMENTS OF CBS INC.

CBS Inc. ("CBS") submits these comments in response to the May 14, 1992 Notice of Proposed Rulemaking, FCC 92-209 ("NPRM"), in which the Commission "proposes alternative means of lessening the regulatory burden on television broadcasters as they seek to adapt to the multichannel video marketplace." NPRM at ¶ 1.

INTRODUCTION

The record in this proceeding already includes a comprehensive June 1991 staff report on the changes in the video marketplace since 1975,[1/] as well as dozens of

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1/ F. Setzer and J. Levy, Broadcast Television in a Multichannel Marketplace, FCC Office of Plans and Policy Working Paper No. 26, 6 FCC Rcd 3996 (1991) ("OPP Report").

responses to the Commission's Notice of Inquiry[2/] which sought public comment on that report. Based on that record, the current NPRM proposes to consider relaxation of certain structural rules which hobble television broadcasting relative to its cable and other multichannel competitors, including the national and local restrictions on television station ownership and the restrictions on common radio and television station ownership in a market. The Commission also proposes to revisit the dual network rule and certain rules restricting television network activity in smaller markets.

As we emphasized in our November 21, 1991 comments on the NOI ("CBS Comments"), CBS brings to this proceeding the perspective of a television network and station group owner whose business is concentrated almost entirely on broadcasting.[3/] This commitment reflects our fundamental faith that free, over-the-air television in general, and the network/affiliate system in particular, can and should

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2/ Notice of Inquiry in MM Docket No. 91-221, 6 FCC Rcd 4961 (1991), 56 FR 40847 (August 16, 1991) ("NOI").

3/ As part of its recent acquisition of the assets of Midwest Communications, Inc., including two full service television stations, two satellite television stations, and two radio stations, CBS also acquired Midwest Cable & Satellite, Inc., which operates a regional cable sports network and a regional common carrier service.

remain a cornerstone of the video distribution system for the indefinite future. For this to be true, however, it is vital that the Commission act to repeal or significantly relax the outmoded and unnecessary structural regulations which continue to handicap broadcast television in its increasingly intense competition with cable and other multichannel video distributors for audiences and advertising revenue.

With its focus on ownership restrictions and the dual network rule, this NPRM addresses some of the areas most urgently in need of reform.[4/] In today's transformed video marketplace, with an abundance of programming sources and viewer options scarcely dreamed of even a decade ago, these restrictions are unnecessary to protect diversity and

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4/ In our NOI comments and in reply comments, CBS urged elimination or relaxation of various of these regulations, including the ownership limitations which are the focus of the current NPRM, the off-network restriction of the prime time access rule, and the chain broadcasting rules to the extent they create perverse incentives for affiliates to preempt network programming for purely economic reasons unrelated to public interest considerations. We also urged the Commission to support legislation to establish the right of broadcasters to negotiate the terms of cable carriage of local television signals. And we have in another proceeding advocated repeal of the financial interest and syndication rules. Syndication and Financial Interest Rules, 6 FCC Rcd 3094 (1991), appeal docketed sub nom. Schurz Communications, Inc. v. FCC, No. 91-2350, 91-2597 & 91-1117 (7th Cir. June 14, 1991).

competition. Indeed, they disserve the public by preventing cost efficiencies which could lead to greater investment in broadcast service improvements and enhanced news and other broadcast programming. To take into account the profound changes in the video marketplace, and to protect the long-term future of free over-the-air broadcasting and the network/affiliate system, CBS urges the following:

- <u>National Television Station Ownership Limits.</u> The Commission should eliminate the national limits or, at least, raise them to permit ownership of up to 24 stations serving up to 35 percent of American households.

- <u>Local Ownership Rules.</u> Local ownership restrictions should be measured by reference to a station's Grade A service area, rather than its Grade B contour. The Commission should also relax its local restrictions to permit co-ownership of at least two UHF stations in a market and co-ownership of one VHF and one UHF station in markets which would still include at least six separately owned stations.

- <u>Radio-Television Cross-Ownership.</u> The Commission should relax its current policy regarding radio-television cross-ownership to permit such combinations subject only to the applicable ownership limits for each service or, at least, to permit them in any market with at least 30 separately owned broadcast stations.

- Dual Network Rule. The dual network rule should be eliminated.

- Network Activities in Small Markets. The Commission should eliminate archaic provisions forbidding network station ownership in small markets and requiring the third network in a market to first offer its programming to an independent station rather than to a station primarily affiliated with another network.

I. The Commission Should Repeal or Significantly Relax the National Station Ownership Limits

In 1984, the Commission concluded that changes in the television marketplace -- notably the increase in the number of stations and the emergence of cable -- had rendered the national ownership rules unnecessary. Multiple Ownership, 100 F.C.C.2d 17, 18-20 (1984). Moreover, the Commission found that the rules actually disserved the public by impeding the realization of economies of scale and other benefits of group ownership. Id. On this basis, the Commission decided to increase the maximum number of jointly owned stations from seven to 12 for a transitional six-year period, after which the rule would be entirely eliminated. Id. On reconsideration, the Commission removed the automatic sunset, but reaffirmed its fundamental conclusion that "the total elimination of a presumptive national ownership rule would benefit the public interest [and] would not contravene our traditional policy objectives of promoting diversity and preventing undue economic concentration." Multiple Ownership (Reconsideration), 100 F.C.C.2d 74, 97 (1985).[5/]

As we discussed at length in our NOI comments, the case for elimination of the national ownership limits -- or, at the least, for a substantial relaxation of those limits -- is even more compelling today than it was eight years ago. The marketplace changes identified by the Commission in 1984 have continued and accelerated, further diminishing any justification for retention of the limits and increasing the need for their reform.

5/ The Commission on reconsideration also established a national audience reach cap of 25 percent of television households and added special provisions permitting somewhat higher levels of ownership where minority-controlled entities are involved.

A. Diversity of Viewpoints

The diversity of media viewpoints available in any community is a consequence of the number of media sources in that market. Whether or not those sources are jointly owned with sources in other markets does not affect the diversity of viewpoints available to that community. Accordingly, as the Commission observed in 1984, "a national [television station ownership] rule is irrelevant to the number of diverse viewpoints in any particular community." Multiple Ownership, 100 F.C.C.2d at 25.

The Commission made the same point in its recent relaxation of limits on radio station ownership:

> "With respect to viewpoint diversity, the immediate frame of reference for most consumers is the local area in which they live and work. In other words, listeners in San Francisco, St. Louis and Philadelphia each perceive program and viewpoint diversity in terms of the ideas available to them locally, regardless of what ideas are available in other broadcast markets."[6/]

Viewed on either a national or a local level, the number and diversity of media sources currently available to the American public is astounding. This is true even if one focuses only on television.[7/] The explosive growth in

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6/ Revision of Radio Rules and Policies, 7 FCC Rcd 2755, 2766 (1992) ("Radio Ownership").

7/ As the Commission has suggested, the relevant market for viewpoint or programming diversity should logically encompass the whole range of sources of
(Footnote continued to next page)

television alternatives discussed by the Commission in 1984 has continued, spurred by the increase in independent stations, the powerful expansion of cable, and the rapid proliferation of videocassette recorders (VCR's).

- There are now 1,497 operating full-power television stations in the U.S., a 25 percent increase since the end of 1984 (1,194 stations) and a 70 percent increase since 1971.[8/]

- There are now 1,277 operating low power television stations, compared to 130 at the end of 1984.[9/]

- More than half of all households receive 10 or more over-the-air television signals, up from 36 percent in 1984 and 21 percent in 1975.[10/]

(Footnote continued from previous page)

7/ information and ideas, including not only broadcast television but also cable, radio, newspapers, magazines, videocassettes, books, and other sources. Multiple Ownership, 100 F.C.C. 2d at 25-26.

8/ Broadcasting, August 17, 1992, at 45; Broadcasting/Cablecasting Yearbook 1985 at A-2; NPRM at ¶ 3; NPRM at ¶ 39 n.63.

9/ Broadcasting, August 17, 1992, at 45; Broadcasting/Cablecasting Yearbook 1985 at A-7.

10/ OPP Report, 6 FCC Rcd at 4013.

• According to the most recent figures in Broadcasting magazine, more than 92 million of the nation's 92.1 million television homes are now passed by cable.[11/] In other words, cable television is now available to more than 99 percent of America's television households -- up from 76 percent at the end of 1984 and 15 percent in 1970.[12/] More than 60 percent of television households subscribe to cable, compared to 43 percent in 1984; the number of subscribing households has risen during that time by more then 19 million, or 52 percent.[13/]

• Cable channel capacity has grown dramatically in the last six years, with 89 percent of cable subscribers receiving 30 or more channels in 1990, compared to 49 percent in 1983. With increasing channel capacity and subscription have come a concomitant increase in cable programming sources, including basic and regional networks, pay cable services, and pay-per-view. More than 130 national and regional cable networks and services were available in 1990, up from 75 in 1983.[14/]

11/ Broadcasting, August 17, 1992, at 45.

12/ OPP Report, 6 FCC Rcd at 4044.

13/ Id.

14/ Id. at 4054, 4049; Cablevision, October 31, 1983, at 150.

• VCR's are now in more than 78 percent of television households, up from 21 percent in 1985 and less than 2 percent in 1980.[15/]

Whether one considers news, information, entertainment, or sports, the alternatives available to the public through broadcast television, cable and videocassette have increased substantially since 1984. Given the tremendous abundance of home video sources in the current market -- and the prospects for their continued expansion through video compression, satellite delivery, and other emerging technologies -- there is even less reason now than in 1984 to believe that restrictions on national ownership are necessary to preserve diversity in viewpoint or programming.

It is worth emphasizing again, as the Commission did in 1984, that group ownership does not mean that jointly

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15/ Broadcasting & Cable Market Place 1992 at xxiii, OPP Report, 6 FCC Rcd at 4066. The presence of a VCR increases a household's programming options in several ways: by permitting taping of programs that would otherwise be missed because of their scheduling or conflict with another program, and by allowing access to literally thousands of videocassettes -- movies, documentaries, sporting events, and other entertainment and non-entertainment programming -- available for purchase or rent. Id. at 105.

owned stations speak with one voice. To the contrary, it remains the general practice of group-owned stations to exercise substantial local autonomy over non-network programming choices and, in particular, over local news operations. See Multiple Ownership, 100 F.C.C.2d at 34. See also Radio Ownership, 7 FCC Rcd at 2766-67.

The seven CBS-owned full-service television stations, for example, differ significantly from each other in their non-network programming, both in regularly scheduled non-network series and in special programs. Indeed, each occasionally preempts the network to present programming of particular local interest, including news and public affairs specials. Each has an independent local newsroom and news operations.

Moreover, as the Commission observed in 1984, group-owned stations have tended to do "a superior job of responding to viewer demand for news," Multiple Ownership, 100 F.C.C.2d. at 31, as compared to individually owned stations, with stronger commitments to news and public service. Thus, in addition to network programs including CBS THIS MORNING, THE CBS EVENING NEWS, 60 MINUTES, 48 HOURS, STREET STORIES, CBS SUNDAY MORNING, and FACE THE NATION, each of the seven CBS-owned television stations presents from 10 to 25 hours of regularly scheduled local news and public affairs programs every week.[16/] The stations also present locally produced news specials and PSA's. Again, this demonstrates the tendency of group and network station ownership to "enhance the information and entertainment markets by increasing the amount of local news and public affairs programming." Id. See also Radio Ownership, 7 FCC Rcd at 2766-67.

B. Economic Competition

The great proliferation in the number of video sources has been accompanied by a dramatic increase in the competitiveness of the television marketplace. As the OPP Report described in detail, the television market has become intensely competitive, whether measured by audience size or by advertising revenues.

The combined shares of audience and revenues of the three traditional networks -- CBS, ABC, and NBC -- have declined steadily through the last decade. The

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16/ This includes both daily newscasts and weekly series such as NEWSMAKERS, TROUBLESHOOTER, 2 THE POINT, and TODAY'S RELIGION (KCBS-TV, Los Angeles); COMMON GROUND, NEWSMAKERS, MAGIC DOOR, and DIFFERENT DRUMMERS (WBBM-TV, Chicago); FAMILY FOCUS, NEWS FORUM, OVER 50, and HORIZONS (WCAU, Philadelphia); SUNDAY EDITION and CHANNEL 2: THE PEOPLE (WCBS-TV, New York); INSIGHT and THE MIAMI RELIGION DISCUSSION (WCIX, Miami); INQUIRY (WFRV, Green Bay); and MOORE ON SUNDAY and SUNDAY MORNING (WCCO-TV, Minneapolis).

three-network share of the prime time audience, for example, has dropped from 93 percent in 1975 to 63 for the 1991-92 season.[17/] During the same period, aggregate audience shares of independent stations, stations affiliated with the new Fox network, and cable all increased sharply.[18/]

Similarly, advertising revenues among the three traditional networks declined from 45 percent of all television advertising in 1975 to 34 percent in 1990.[19/] Advertising shares for independent and Fox-affiliated stations and for cable increased substantially during that period.[20/]

In sum, whether measured by audience share or advertising revenues, the television market is significantly more competitive and less concentrated than it was in 1984. At that time, the Commission concluded that "even putting to one side the alternative video and other mass media, it is clear that there is no undue

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17/ OPP Report, 6 FCC Rcd at 4018; Nielsen Television Index.

18/ OPP Report, 6 FCC Rcd at 4021.

19/ Id. at 4078.

20/ Id. at 4069-84.

economic concentration for TV alone." Multiple Ownership, 100 F.C.C.2d at 42. That conclusion is all the more powerful today, as the traditional strength of the television networks and their owned and affiliated stations has substantially declined, and the market power of independent stations, cable, and a fourth network (Fox) continues to grow.

C. Benefits of Repeal

In 1984, the Commission concluded that elimination of the national television station ownership rules could provide important public benefits by extending the skills and resources of group owners to additional markets and by enabling stations to realize important cost efficiencies and economies. Multiple Ownership, 100 F.C.C.2d at 44-46. The Commission determined that the savings and efficiencies provided by group ownership would result in various service improvements to the community, notably improved news and informational programming. Id.

The Commission has repeatedly reaffirmed these findings. See, e.g., Multiple Ownership (Duopoly), 4 FCC Rcd 1741, 1746-50 (1989)(discussing the "many public interest or consumer welfare benefits" of group ownership). Notably, in its recent relaxation of national ownership limits for radio, the Commission relied heavily on its experience with television stations for its conclusion that "greater consolidation could increase the variety of programming available to the public, including local news and public affairs programming." Radio Ownership, 7 FCC Rcd at 2768. Indeed, the Commission observed that its experience with group-owned television stations "suggests that [a] higher investment in news is a function of the benefits of scale, and portends that relaxation of the national [radio station ownership] rule will provide the public with more news and informational programming." Id. at 2769.

The continuing fractionalization of the television audience, and the increasing competition from cable and other rivals, has only heightened the importance of allowing television broadcasters to achieve effective allocation of resources and to realize the efficiencies and cost-savings that group ownership can provide.[21/] Like radio station owners, television broadcasters should be allowed the opportunity "to enjoy greater efficiencies that redound to the benefit of the public and affirmatively

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21/ The OPP Report and the NPRM both observe that vast numbers of stations, both independents and affiliates, have experienced losses in recent years, while even profitable stations have experienced a significant decline in profits. NPRM at ¶ 5; OPP Report, 6 FCC Rcd at 4025-27.

serve our competition and diversity goals." Radio Ownership, 7 FCC Rcd at 2770.

The Commission has noted many respects in which group ownership of stations provides useful opportunities for cost savings through the sharing of various services and other economies. See, e.g., Multiple Ownership, 100 F.C.C.2d at 45; Duopoly, 4 FCC Rcd at 1746-47. The CBS-owned television stations, for example, realize significant savings from joint finance, sales, legal, and other operations and staffing. They save further through joint acquisitions of certain products (e.g., cameras and sound equipment), services (e.g., consultants, ratings services), and programming.

In addition, each CBS-owned station benefits from the experience and expertise acquired by CBS management and personnel over the years. This powerful benefit of group ownership permits skilled and successful television owners to bring their talents and resources to more markets, thus improving the capabilities and performance of additional stations. Multiple Ownership, 100 F.C.C.2d at 45.

Jointly owned stations also can call on the combined economic resources of the group to support original programming production. In recent years, for example, various combinations of the CBS-owned television stations have joined in presenting programming like STUDIO 22 and the children's programs CLUE YOU IN, KIDSIDE, and CHRISTMAS EVERY DAY, all of which have been produced by the stations individually or by the CBS Television Stations division.

Similarly, jointly owned stations can cooperate in news coverage and programming, greatly extending the reach and scope of their local news operations. For example, the CBS-owned television stations regularly exchange news footage and reports with each other. These range from coverage of breaking news, such as KCBS-TV's reports on the Los Angeles riots, to consumer investigative pieces and other local stories of interest beyond their markets. In addition, the stations often share correspondents, crews, facilities and transponder space in pooled reports from major news sites, such as the political conventions, the fall of the Berlin Wall, the Gulf War, and the fighting in Sarajevo. Group ownership thus greatly enhances the ability of each station to present coverage of events and issues of local interest which unfold in far-away locations.

Additional to the above, special benefits are available to television stations owned by the major networks. The CBS-owned stations, for example, enjoy special access -- beyond that provided to non-owned network affiliates -- to CBS News materials, personnel, and technical facilities. They also profit from the expertise and counsel of experienced network management and employees. And they are aided in their abilities to attract talented management, news, and other employees by the opportunity for advancement to positions within the network. Multiple Ownership, 100 F.C.C. 2d, at 53.

At the same time, as the Commission has long recognized, ownership of stations in major markets is a vital component of a healthy and effective television network. Thus, in 1954, a time of far less diversity and competition in the television marketplace, the Commission observed that:

> "[t]he ownership of broadcast stations in major markets by the networks is an important element of network broadcasting. Our nation-wide system of broadcasting as we know it today requires that some multiple ownership of broadcast stations be permitted."

Amendment of Section 3.636 of the Commission's Rules and Regulations, 43 F.C.C. 2797, 2801 (1954).

Owned stations historically have served as the nucleus for network operations, assuring a certain level of clearances for network programming and providing a base of